Supreme Court of the United States.

No. 830.

NEW ORLEANS CANAL AND BANKING COMPANY,
PLAINTIFF IN ERROR,

versus

THE CITY OF NEW ORLEANS.

Brief for City of New Orleans.

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The City of New Orleans annually levies an *ad valorem* tax on all real and personal property within the limits of the corporation. Acts 1870, Ex. Sess., p. 37, secs. 13, 14, 16 and 18.

This it did for the year 1876 by ordinance No. 3367, A. S., levying a tax of one and one-half per centum on the amount of assessments.

The N. O. Canal and Banking Company, the plaintiff in error, was duly assessed, as required by law, 1st, for the real estate owned by it; 2d, for all other property belonging to it. Acts 1870, p. 37, secs. 13, 14, 16 and 18; Acts 1871, p. 12, sec. 22; Ray's Revised Statutes, sec. 307.

There was no difficulty raised as regards the assess-

ment on real estate, but to the listing of the capital of the Bank exclusive of the real estate, plaintiff in error objects. The amount of the assessment is $700,000 of capital *exclusive* of real estate. (See tax bill, Record, p. 4.) No appearance was made in the court of first instance before *judgment;* and after being tried twice in the Supreme Court of the State, and there twice lost by the Bank, the cause has been brought on writ of error to the notice of your Honors.

The whole case and all the points involved are fully stated in the two opinions of the Supreme Court of the State, given in favor of the City. Record, pp. 26, 32.

The Bank claimed that the $700,000 assessment was an assessment of capital *exempt* from taxation, as this capital was invested in "*greenbacks*," which, under the act of Congress, could not be taxed. It was conceded for all the purposes of this case that "greenbacks" were *not taxable;* but it was held by the City that the "*greenbacks*" in the possession of the bank were *not included in the assessment of* $700,000.

The whole controversy was thus narrowed to a simple question of fact, and never did involve any construction of an act of Congress, nor was any such decision rendered. (See Opinion, Record, p. 38.)

Accordingly it will be seen from the assignment of errors, pp. 9 and 10 of the Bank's brief, that it is not stated that any law of the United States has been passed on or interpreted, but that the facts, as found by the Louisiana Supreme Court, do not permit the

Bank to have the benefit of the act of Congress exempting greenbacks.

These errors are set out as follows:

ASSIGNMENT OF ERRORS.

1. The court, admitting that the Bank is not taxable on its deposits or its non-taxable money, concludes that it is not exempt on both added together, (which we never claimed,) and that it is our duty to apply our money to the payment of our deposits.

2. The court erred in establishing an imaginary set-off, between the bank's liabilities and its non-taxable money, by which the latter is made to disappear, and thus the bank has nothing non-taxable left.

3. The court erred in holding, as we understand it to have done, that in order to entitle the bank to the exemption claimed, "it is necessary that the entire capital "of the bank should be invested in greenbacks, and "nothing else, and that it should have no other means "of redeeming its deposits."

4. Upon the facts admitted, it is evident that we have no capital, which is not exempt by the laws of the United States, and the court erred in refusing us the benefit of the exemption.

First error assigned—This is a complaint resting entirely on a question of fact; that is, whether the "greenbacks" and deposits were excluded from the assessment of capital.

The statement of the condition of the bank, at the time of the assessment, is as follows:

Statement of the affairs of the New Orleans Canal and Banking Company on Monday, 28th June, 1875.

1.	Real Estate		$182,516 85
2.	Stocks		8,228 35
3.	Taxes paid		14,431 65
4.	Suspended debts		54,740 80
5.	Foreign and Domestic Bills protested		26,949 73
6.	Notes and Bills discounted		1,833,146 41
7.	Foreign Domestic Exchange		919,996 51
8.	Interest due on Loans on call		3,349 47
9.	City 7 per cents Gold Bonds ($50,000)		25,750 00
10.	CASH ITEMS—		
11.	Gold	$ 32,419 80	
12.	Legal Tender	974,777 17	
13.	Checks sent to Clearing House	172,409 73	1,179,606 70
			$4,248,716 47
14.	Capital Stock	1,000,000 00	
15.	Profit and Loss	99,694 00	
16.	Dividends unpaid	46,556 00	
17.	Individual Depositors	3,044,957 19	
18.	Foreign Banks and Banking	48,061 78	
19.	Circulation	9,447 50	
			$4,248,716 47

See Record, p. 31.

As it was incumbent on the bank to show the exemption claimed, and to prove that the assessment as made included the "greenbacks," this statement was put in for that purpose.

But the statement shows quite the contrary. Originally the bank had put in a list of *treasury notes only*, and argued on the assumption that this was its whole capital, and that it had been erroneously taxed. The court refused to accept that theory, and asked if it had no other capital or assets. The recently furnished exhibit answers that, and shows that the Canal Bank possesses *four millions* ($4,000,000) of assets, of which $974,777 17 were in greenbacks on 28th June, 1875. From the exhibit, it appears if items 15 to 19 were to be allowed as liabilities, there would still be left a million of dollars of clear capital, and all debts paid. But, says learned counsel for defendant, we will consider that million dollars as invested in the greenbacks, and so exempt.

Now, this may be very convenient to help against taxation. But if the greenbacks are not taxable, they are at least useful in paying the debts due depositors, and as they are, in truth, the deposits themselves, they would be, in a settlement of the bank, the first things paid out; when, after finally settling with each creditor, the stockholders, or bank, would find that their remaining million was not *greenbacks*. The idea that this clear million of the bank's property shall be taken to be greenbacks, is to suppose that an institution created to give out ITS OWN money at interest, really

lends no funds except those deposited with it, whilst it keeps its own money in treasury notes. We see from the list or statement over four millions of assets, of which over three millions are not "greenbacks," and so not exempt from taxation. But by ingeniously saying, that as all this is assessed as capital, immunity for the millions not greenbacks will be obtained by offsetting them with the liabilities, and then, by claiming the fourth million to be treasury notes, so escape all taxation. Such a position, if granted, would work serious changes in the tax rolls.

A man who might have $100,000 in bonds, good notes and greenbacks, would escape all taxation on capital, if his fortune consisted of one-half greenbacks, and he owed a debt of $50,000. He would say, as the Canal Bank does here: "I offset the $50,000 of my capital or fortune, invested in bonds, with a like amount of debts, and the balance being greenbacks, is not subject to assessment." The more natural way would be to offset or discharge his liabilities with the greenbacks, and leave the bonds and notes to be taxed. The greenbacks in the statement are the deposits, as far as they go, of the bank, and extinguishes or pays a like amount from the three millions due depositors, after which, the remaining aggregate liabilities, deducted from the aggregate of assets less the treasury notes, will leave a million dollars of clear capital, which has only been assessed at $700,000.

It seems scarcely credible that the bank's learned

counsel, would have us regard the greenbacks in the list, as that which would remain to the Bank, and its stockholders, after paying all liabilities. Let us suppose, on the 28th June, 1875, the Bank actually began settling with its creditors, would it do so by first setting aside the greenbacks for itself, and then turning over to the creditors, the accounts with foreign bankers, the notes and bills in its portfolio?

If there was a run on the Bank, would its officers cry out to the excited throng, "here, take these notes and accounts, *they are yours*, and *exclusively* represent your deposits; but the *money* in the bank is *our capital?*"

That any course of reasoning could convince one that a bank liable to taxation and controlling four millions of assets could shield it *all* from assessment, will be doubted; but it will not be believed that this may be done by simply saying, (when sued) we will pay our debts from our portfolio and accounts *exclusively*, but will hold the greenbacks as our capital, because they are exempt.

If the bank officers really held their paid in capital in greenbacks, they would be violating their trust, for as the institution was created to loan money at interest, "to put money out to the exchangers," they would be defeating the very purposes of banking.

That the capital of the Bank cannot be said to be invested in these greenbacks rather than in the bills discounted, accounts, etc., held by it, is also evident, from the fact that the greenbacks were never bought

nor invested in; they were deposited; whereas the bills, etc., etc., were specially bought and invested in. Is the bank to be permitted to say: "But being in possession of greenbacks, we will regard them for the purposes of this suit, as being our capital, for thus we may escape taxation? Certain it is, that no part of their capital went out for the greenbacks; nothing of the bank's was given in exchange for them; how, then, can it be said, *THEY are the capital?*

This first assigned error is thus seen to involve a simple question of fact, as to whether the assessment as made did or did not necessarily include the greenbacks, and does not in any manner necessitate the construction of any act of Congress.

Secondly—The second error assigned is merely a repetition of the first, and presents precisely the same question of fact.

Thirdly—The third error assigned is confessed by counsel, to be according to his understanding, of the judgment which he wishes to have reversed. The court did *not* hold that, in order to entitle a bank to an exemption of greenbacks, it is necessary that the whole capital of the bank should be in non-taxable securities.

The court held that the thing claimed to be exempt, namely, greenbacks, had *not been included* in the assessment of $700,000, and that the "Canal Bank" had a *taxable* capital to that amount, *after deducting* the greenbacks as a part of the sum required to meet or set off the liabilities, whether to depositors or others.

The court held that the "greenbacks" had not and were not being taxed, and that the bank had been denied no right of exemption.

If, indeed, the whole of the assets or capital of the Bank was in greenbacks or non-taxable securities, then there could be no taxation; but a very large amount of the assets of the Bank consists in *taxable property*, and in order to obtain entire immunity from taxation, the counsel opposed contends that the *taxable assets* shall be considered as wiped out by deposits and liabilities, and the remainder of the assets to be regarded as invested in "greenbacks," and as being the capital taxed. Such a disposition would not only allow the exemption of the "greenbacks," but would likewise screen from taxation the really taxable property in the hands of the Bank. It would grant an exemption to what is, in no wise, entitled to it.

Fourthly—The fourth error assigned turns again on the fact, whether the $700,000 was an assessment of property including the greenbacks, and is answered above.

It assumes that the whole capital of the Bank is represented by the greenbacks in its possession, when the decision is that the contrary is the fact; therefore, no exemption which could be claimed, or has been claimed, has been refused.

JURISDICTION.

In the petition for the writ of error, it is stated that

the case involves the construction of Sections 3701 and 5413 of the Revised Statutes of the United States, and on this allegation alone, rested the right to the writ, and depends the jurisdiction of this Honorable Court. The sections refered to, exempt from taxation the treasury notes of the United States "greenbacks." But no such laws have been construed by the Supreme Court of Louisiana. In the case at bar, a careful perusal of the judgments of that tribunal, will show that so far from interpreting or construing these sections, the court, in the clearest manner, accepts them as the law, concedes that greenbacks are exempt, but proceeds to say that in *fact* the treasury notes have not been assessed, and are not being taxed.

(See opinion, Record, p. 32.)

In Murray vs. City of Charleston, decided by this Honorable Court in April, 1878, 6 Otto, 432, it was said that, "everywhere in our decisions it has been held "that we may review the judgments of a State Court, "when the determination or judgment of that court "could not have been given without deciding upon a "right or authority claimed, to exist under the constitu- "tion, laws, or treaties of the United States," and *deciding against the right.* Now, no such right is questioned in the case at bar; it is conceded that the right to exemption exists; and that, as a matter of fact, the thing exempt has *not* been taxed.

CONCLUSION.

The authorities cited for the Bank are mainly re-

viewed in the opinion of the State Court, and need no particular attention, as none of the principles they maintain are disputed, and certainly none are violated in the position of the City of New Orleans, that the "greenbacks" held by the Bank have not been taxed. The cases cited show that the property in which the capital is invested is *the capital itself*, and if such property be exempt then the capital which it represents, is likewise exempt. This is unquestionably true. But it does not make it any the less true, that what is not represented by non-taxable property or assets is to be taxed.

The careful statement of the case, in the opinion of the State Court, and its elaborate reasoning and full citation of authorities, makes it unnecessary to extend the limits of this brief. The City of New Orleans, therefore, submits the case, asking that the judgment be affirmed.

Respectfully submitted,

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